

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JOSEPH MIZZONI,

Case No. 2:18-cv-00731-GMN-BNW

Plaintiff

ORDER

v.

STATE OF NEVADA et al.,

Defendants

This action began with a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a former state inmate. On May 17, 2019, the Court issued an order dismissing the complaint with leave to amend and directed Plaintiff to file an amended complaint. (ECF No. 9). After granting an extension of time, Plaintiff's first amended complaint was due on or before August 20, 2019. (ECF No. 13). The deadline has now expired, and Plaintiff has not filed an amended complaint or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with local rules).

1 In determining whether to dismiss an action for lack of prosecution, failure to obey
2 a court order, or failure to comply with local rules, the court must consider several factors:
3 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
4 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
5 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
6 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
7 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

8 Here, the Court finds that the first two factors, the public's interest in expeditiously
9 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
10 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
11 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
12 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
13 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
14 disposition of cases on their merits—is greatly outweighed by the factors in favor of
15 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
16 the court's order will result in dismissal satisfies the "consideration of alternatives"
17 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
18 F.2d at 1424. The Court's order requiring Plaintiff to file an amended complaint by August
19 20, 2019, expressly stated: "It is further ordered that, if Plaintiff fails to timely file his first
20 amended complaint, the Court will dismiss this action with prejudice." (ECF No. 13 at 1).
21 Thus, Plaintiff had adequate warning that dismissal would result from his noncompliance
22 with the Court's order to file an amended complaint by August 20, 2019.

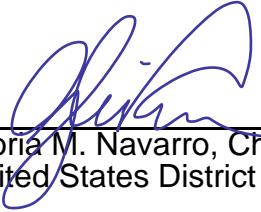
23 It is therefore ordered that this action is dismissed with prejudice based on
24 Plaintiff's failure to file an amended complaint in compliance with this Court's May 17,
25 2019, and June 21, 2019, orders.

26 It is further ordered that the motion to proceed *in forma pauperis* (ECF No. 11) is
27 denied as moot.

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1 It is further ordered that the Clerk of Court shall enter judgment accordingly.
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3 DATED THIS 27 day of August 2019.

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6 Gloria M. Navarro, Chief Judge
7 United States District Court

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